IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOEL BENITEZ,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 3:17-cv-544**
TYSON FOODS, INC.,	§	
	§	
Defendant.	§	
	§	
	§	

DEFENDANT'S INDEX OF DOCUMENTS PURSUANT TO LR 81.1

Exhibit A	Civil Case Information Sheet from Dallas County, Texas Court (filed with the Dallas County District Court January 24, 2017);
Exhibit B	Plaintiffs' (sic) Original Petition and Request for Disclosure (filed with Dallas County District Court on January 24, 2017);
Exhibit C	Citation for Defendant Tyson Foods, Inc. issued on January 24, 2017);
Exhibit D	Citation for Defendant Tyson Foods, Inc. with Officer's Return signed by Adil Tadli (filed with Dallas County District Court on January 26, 2017);
Exhibit E	Letter from Defendant's counsel to Plaintiff's counsel (filed with Dallas County District Court on February 17, 2017);
Exhibit F	Defendant Tyson Foods, Inc.'s Original Answer (filed with Dallas County District Court on February 17, 2017);
Exhibit G	Letters from Judge Tobolowsky to the parties regarding dismissal for want of prosecution; and
Exhibit H	Docket Sheet in the State Court Action.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
(214) 777-4200 / Fax (214) 777-4299

By: /s/ Zach T. Mayer
Zach T. Mayer
State Bar No. 24013118
zmayer@krcl.com
Brian J. Fisher
State Bar No. 24032178
bfisher@krcl.com
J. Edward Johnson
State Bar No. 24070001
ejohnson@krcl.com

ATTORNEYS FOR DEFENDANT TYSON FOODS, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of February 2017, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

VIA ECF and Email:
greg.bevel@romclawyers.com;
wgould@romclawyers.com
Gregory H. Bevel
Wesley H. M. Gould
ROCHELLE MCCULLOUGH, L.L.P.
325 N. Saint Paul Street, Suite 4500
Dallas, Texas 75201

/s/ Zach T.Mayer
Zach T. Mayer

EXHIBIT "A"

FILED
DALLAS COUNTY
1/24/2017 10:54:52 AM
FELICIA PITRE
DISTRICT CLERK

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (*FOR CLERK USE ONLY*): DC-17-00883 COURT (*FOR CLERK USE ONLY*): ______

STYLED Joel Benitez, Plaintiff, v. Tyson Foods, Inc., Defendant
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:

Name: Wesley H. M. Gould
Email: wgould@romclawyers.com
Address: 325 N. Saint Paul Street, Suite 4500
Telephone: (214) 953-0182
City/State/Zip: Dallas, Texas 75201
Fax: (214) 953-0185
Signature: [signature]
State Bar No: 24095214

Names of parties in case:

Plaintiff(s)/Petitioner(s): Joel Benitez

Defendant(s)/Respondent(s): Tyson Foods, Inc.

[Attach additional page as necessary to list all parties]

Person or entity completing sheet is:

- ☒ Attorney for Plaintiff/Petitioner
- ☐ *Pro Se* Plaintiff/Petitioner
- ☐ Title IV-D Agency
- ☐ Other: ______

Additional Parties in Child Support Case:
Custodial Parent: ______
Non-Custodial Parent: ______
Presumed Father: ______

2. Indicate case type, or identify the most important issue in the case (*select only 1*):

Civil

Contract
Debt/Contract
- ☐ Consumer/DTPA
- ☐ Debt/Contract
- ☐ Fraud/Misrepresentation
- ☐ Other Debt/Contract: ______

Foreclosure
- ☐ Home Equity—Expedited
- ☐ Other Foreclosure
- ☐ Franchise
- ☐ Insurance
- ☐ Landlord/Tenant
- ☐ Non-Competition
- ☐ Partnership
- ☐ Other Contract: ______

Injury or Damage
- ☐ Assault/Battery
- ☐ Construction
- ☐ Defamation

Malpractice
- ☐ Accounting
- ☐ Legal
- ☐ Medical
- ☐ Other Professional Liability: ______
- ☐ Motor Vehicle Accident
- ☐ Premises

Product Liability
- ☐ Asbestos/Silica
- ☐ Other Product Liability List Product: ______
- ☒ Other Injury or Damage: Negligence

Real Property
- ☐ Eminent Domain/ Condemnation
- ☐ Partition
- ☐ Quiet Title
- ☐ Trespass to Try Title
- ☐ Other Property: ______

Related to Criminal Matters
- ☐ Expunction
- ☐ Judgment Nisi
- ☐ Non-Disclosure
- ☐ Seizure/Forfeiture
- ☐ Writ of Habeas Corpus—Pre-indictment
- ☐ Other: ______

Employment
- ☐ Discrimination
- ☐ Retaliation
- ☐ Termination
- ☐ Workers' Compensation
- ☐ Other Employment: ______

Other Civil
- ☐ Administrative Appeal
- ☐ Antitrust/Unfair Competition
- ☐ Code Violations
- ☐ Foreign Judgment
- ☐ Intellectual Property
- ☐ Lawyer Discipline
- ☐ Perpetuate Testimony
- ☐ Securities/Stock
- ☐ Tortious Interference
- ☐ Other: ______

Family Law

Marriage Relationship
- ☐ Annulment
- ☐ Declare Marriage Void

Divorce
- ☐ With Children
- ☐ No Children

Post-judgment Actions (non-Title IV-D)
- ☐ Enforcement
- ☐ Modification—Custody
- ☐ Modification—Other

Title IV-D
- ☐ Enforcement/Modification
- ☐ Paternity
- ☐ Reciprocals (UIFSA)
- ☐ Support Order

Other Family Law
- ☐ Enforce Foreign Judgment
- ☐ Habeas Corpus
- ☐ Name Change
- ☐ Protective Order
- ☐ Removal of Disabilities of Minority
- ☐ Other: ______

Parent-Child Relationship
- ☐ Adoption/Adoption with Termination
- ☐ Child Protection
- ☐ Child Support
- ☐ Custody or Visitation
- ☐ Gestational Parenting
- ☐ Grandparent Access
- ☐ Parentage/Paternity
- ☐ Termination of Parental Rights
- ☐ Other Parent-Child: ______

Tax
- ☐ Tax Appraisal
- ☐ Tax Delinquency
- ☐ Other Tax

Probate & Mental Health

Probate/Wills/Intestate Administration
- ☐ Dependent Administration
- ☐ Independent Administration
- ☐ Other Estate Proceedings
- ☐ Guardianship—Adult
- ☐ Guardianship—Minor
- ☐ Mental Health
- ☐ Other: ______

3. Indicate procedure or remedy, if applicable (*may select more than 1*):

- ☐ Appeal from Municipal or Justice Court
- ☐ Arbitration-related
- ☐ Attachment
- ☐ Bill of Review
- ☐ Certiorari
- ☐ Class Action
- ☐ Declaratory Judgment
- ☐ Garnishment
- ☐ Interpleader
- ☐ License
- ☐ Mandamus
- ☐ Post-judgment
- ☐ Prejudgment Remedy
- ☐ Protective Order
- ☐ Receiver
- ☐ Sequestration
- ☐ Temporary Restraining Order/Injunction
- ☐ Turnover

4. Indicate damages sought (*do not select if it is a family law case*):

- ☐ Less than $100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
- ☐ Less than $100,000 and non-monetary relief
- ☐ Over $100, 000 but not more than $200,000
- ☒ Over $200,000 but not more than $1,000,000
- ☐ Over $1,000,000

EXHIBIT "B"

FILED
DALLAS COUNTY
1/24/2017 10:54:52 AM
FELICIA PITRE
DISTRICT CLERK

Tonya Pointer

CAUSE NO. DC-17-00883

JOEL BENITEZ,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	**________ JUDICIAL DISTRICT**
	§	
TYSON FOODS, INC.,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**
	§	

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE:

NOW COMES Joel Benitez ("Mr. Benitez" and "Plaintiff"), in the above-numbered and styled cause, complaining of Defendant Tyson Foods, Inc., ("Tyson Foods"), and files this their Original Petition and Request for Disclosure, and for cause of action would respectfully show the Court as follows:

I. INTRODUCTION

1. Plaintiff brings this action as an employee to recover for the damages he sustained as a direct and proximate result of Tyson Foods' failure to use ordinary care to protect him from dangers which Tyson Foods knew, or should have known, existed at the time of his injury.

II. PARTIES

2. Plaintiff Joel Benitez is a resident of Arlington, Tarrant County, Texas.

3. Defendant Tyson Foods, Inc. is a foreign business corporation duly authorized to do business in the State of Texas, and may be served with process by and through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

III. VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas in that the events giving rise to this cause of action and claims in this lawsuit occurred in Dallas County, Texas.

5. Jurisdiction is proper in that the damages sought well exceed the minimum jurisdictional limits of the Court.

IV. DISCOVERY

6. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure pending the submission of an Agreed Scheduling Order between the parties and approval and entry of the Order by the Court.

V. FACTS

7. On April 6, 2016, Mr. Benitez, an employee of Tyson for 13 years, was assigned the relatively new task of operating a pepperoni slicing machine. The machine was equipped with a guarding system designed to prevent the operator's hands from coming into contact with the slicing blade of the machine. That guarding system was operated by a pneumatic air pressure system separate and apart from the electrical system, which operated the motor that powered the slicing blade. The inherent risk of this dual power supply system is obvious only to the person turning off the safety system, not to the machine operator. The air pressure which operates the guarding system can be turned off, deactivating the safety system, while the electrical system continues to allow the operator of the machine to cut pepperoni, but in the absence of an operational guarding mechanism designed to protect the operator of the machine.

8. While Mr. Benitez was operating his machine slicing pepperoni, another employee of Tyson Foods, Gonzola Casa, left his station and turned off the air compressor, thus inactivating the guarding equipment on the slicer that Mr. Benitez was operating. Without air

pressure, the guard which normally would have prevented Mr. Benitez's hand from coming into contact with the blade of the slicer gave way, and Mr. Benitez's dominant right hand pushed into the spinning blade.

9. Mr. Casas, a Tyson employee, followed no lockout tag-out type of safety procedure to avoid this accident. He gave no verbal warning to Mr. Benitez of his intention to deactivate the air supply and the safety system on the slicer machines.

10. Due to the negligent actions of Mr. Casas, Mr. Benitez sliced off a majority of the last digit of his right index, and middle fingers and almost half of the last digit on the right ring finger.

11. Mr. Benitez was immediately transported to Baylor University Medical Center. Imaging revealed open fractures and tissue loss of right index, middle and ring fingers. Due to the serious nature of his injuries, he underwent surgical repair to place pins in the broken bones in the remaining portion of his fingers, skin graphs to replace areas of skin that were sliced away from the remaining bones of his fingers. Mr. Benitez had two pins surgically implanted in his right ring finger and Mr. Benitez was off work for almost 12 weeks. He underwent extensive physical therapy to help aid in recovery from his injury.

12. Mr. Benitez has subsequently not regained the full use of his right index, middle and pinky finger; he has lost much flexibility, stability, and usage of his right hand and four fingers as documented by medical professionals.

13. Additionally, at all times relevant to the incident made the basis of this lawsuit, Tyson Food, Inc., was a non-subscriber to the Texas Workers Compensation Program.

VI. CAUSES OF ACTION

COUNT 1: NEGLIGENCE

14. Plaintiffs adopts and incorporates each and every allegation of the aforementioned paragraphs as if set forth herein verbatim.

15. The incident made the basis of this lawsuit and Plaintiff's resulting injuries and damages were proximately caused by the negligent conduct of Tyson Foods in one or more of the following respects:

a) In failing to provide and maintain a place of employment that was reasonably safe and healthful for Joel Benitez;

b) In failing to train employees to perform inherently dangerous and hazardous tasks, such as operating a pepperoni slicing machine;

c) In failing to train its employees to perform lockout and/or tag-out type of safety procedure to avoid this accident;

d) In failing to train employees how to operate the pepperoni slicing machine by turning off the air compressor thus inactivating the guarding equipment on the slicing machine would have been operated by a person of ordinary prudence under the same or similar circumstances;

e) In failing to use ordinary care to supervise pepperoni slicer, especially when engaged in an occupation which could be hazardous to life and limb and required skill or experience;

f) In employing untrained and/or un-experienced employees to perform inherently dangerous and hazardous tasks, such as operating a pepperoni slicing machine;

g) In failing to install, maintain, and use methods, processes, devices, and safeguards that were reasonably necessary to protect the life, health, and safety of Joel Benitez;

h) In failing to provide employees with safety instructions and/or safety meetings;

i) In failing to post safety rules and regulations so as to be reasonably conspicuous to Joel Benitez;

j) In failing to inform and/or warn employees of the potential dangers in performing dangerous and hazardous duties;

k) By entrusting the pepperoni slicer to an employee who they knew was not properly trained to operate the pepperoni slicer;

l) By entrusting the pepperoni slicer to an employee who they knew operated the pepperoni slicer in an unsafe manner;

m) By stressing productivity over safety; and,

n) By reprimanding employees who shut down the production line to clear jams in the slicing equipment.

16. The lack of training and supervision on the part of Tyson Foods exposed Joel Benitez to an unnecessary and unreasonable risk of harm which foreseeably lead to him being physically harmed by a pepperoni slicer.

17. Each of these foregoing acts and omissions, whether taken singularly or in combination, constituted negligence on behalf of Tyson Foods which was the proximate cause of the incident made the basis of this lawsuit and the subsequent injuries and damages sustained by Plaintiff.

COUNT 2: VICARIOUS LIABILITY

18. Plaintiff adopts and incorporates each and every allegation of the aforementioned paragraphs as if set forth herein verbatim and alleges that Tyson Foods are vicariously liable for the negligent conduct of their employee, which proximately caused the incident made the basis of this lawsuit and the resulting injuries and damages of the Plaintiff.

19. At all times precedent, upon information and belief, the pepperoni slicer under the employ of Tyson Foods and was authorized by his employer to maintain and operate the pepperoni slicer.

20. At the time of the incident made the basis of this lawsuit, Mr. Casas was operating the pepperoni slicer in the performance of his job and was acting within the scope of his employer's business.

21. Under the theory of respondeat superior, Defendant Tyson Foods is therefore liable for the damages suffered by Plaintiff as a result of the negligence of their employee, Mr. Casas.

22. Mr. Casas turned off the air supply to his machine knowing that his action would de-activate the safety guarding system to Mr. Benitez's slicing machine.

23. Mr. Casas did not warn Mr. Benitez of his actions.

24. Mr. Casas did not follow any lock out and/or tag out procedure to shut down all of the affected slicing machines before he de-activated the safety guarding system.

VII. DAMAGES

25. As a direct and proximate cause of Tyson Foods' negligence, Joel Benitez sustained severe bodily injuries which included, but are not limited to, losing three finger tips from his dominant right hand. Some of the injuries sustained by Mr. Benitez are permanent in nature. The injuries mentioned have had an adverse effect on Mr. Benitez's health and wellbeing, and as a further result of the nature and consequences of his injuries, Mr. Benitez has suffered physical pain and suffering, anguish and physical impairment and in all reasonable probability will continue to suffer in this manner into the future, if not for the balance of his natural life.

26. Mr. Benitez has also suffered permanent scarring and disfigurement.

27. Joel Benitez has also incurred past medical expenses which exceed the minimum jurisdictional limits of the court and in all likelihood, will continue to incur future medical expenses as a result of his injuries.

28. Joel Benitez has also incurred past lost wages and will incur future lost wages due to the injuries he suffered in this incident.

VIII. JURY DEMAND

29. Plaintiff hereby demands a trial by jury.

IX. REQUEST FOR DISCLOSURE

30. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

X. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant Tyson Foods, Inc., be cited to appear and answer herein, and upon final hearing, Plaintiff have and recover from Tyson Foods, Inc., compensation for past and future medical expenses, past and future pain and suffering, past and future emotional distress and mental anguish, past and future impairment and disfigurement, lost wages in the past and future, diminished earning capacity in the future, punitive damages, costs of court, pre-judgment and post-judgment interest in the highest lawful rate, and any further relief both at law and in equity to which Plaintiff may be justly entitled.

Respectfully Submitted,

ROCHELLE MCCULLOUGH, L.L.P.

By: */s/ Wesley H. M. Gould*________
Gregory H. Bevel
State Bar No. 02275800
greg.bevel@romclawyers.com
Wesley H. M. Gould
State Bar No. 24095214
wgould@romclawyers.com
325 N. Saint Paul Street, Suite 4500
Dallas, Texas 75201
(214) 953-0182 Telephone
(214) 953-0185 Facsimile
ATTORNEYS FOR PLAINTIFFS

EXHIBIT "C"

FORM NO. 353-3 - CITATION
THE STATE OF TEXAS

To: **TYSON FOODS INC**
BY SERVING REGISTERED AGENT CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS TX 75201-3136

GREETINGS:
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **298th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **JOEL BENITEZ**

Filed in said Court **24th day of January, 2017** against

TYSON FOODS INC

For Suit, said suit being numbered **DC-17-00883,** the nature of which demand is as follows:
Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 24th day of January, 2017.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

/s/ Marissa Pittman

By________________________________, Deputy
MARISSA PITTMAN

DISTRICT COURT OF DALLAS COUNTY, TEXAS

ESERVE

CITATION

DC-17-00883

JOEL BENITEZ
vs.
TYSON FOODS INC

ISSUED THIS
24th day of January, 2017

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: MARISSA PITTMAN, Deputy

Attorney for Plaintiff
WESLEY GOULD
325 N SAINT PAUL STREET
SUITE 4500
DALLAS TEXAS 75201
214-953-0182

DALLAS COUNTY SERVICE FEES NOT PAID

OFFICER'S RETURN

Case No. : DC-17-00883

Court No.298th District Court

Style: JOEL BENITEZ

vs.

TYSON FOODS INC

Came to hand on the ________________day of __________________, 20_________, at __________o'clock_________.M. Executed at ______________________________,

within the County of __________________________ at ____________ o'clock _______ .M. on the ________________day of____,

20_______________, by delivering to the within named

____

____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _________miles and my fees are as follows: To certify which witness my hand.

For serving Citation	$__________	____
For mileage	$__________	of__________________County, ____________________
For Notary	$__________	By______________________________________Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said__________________________before me this_______day of _____________________, 20_______,

to certify which witness my hand and seal of office.

____

Notary Public___________________County_________________

EXHIBIT "D"

CAUSE NO. DC-17-00883

JOEL BENITEZ	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
VS.	§	**298TH JUDICIAL DISTRICT**
	§	
TYSON FOODS, INC.	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

RETURN OF SERVICE

Came to my hand on **Wednesday, January 25, 2017 at 10:59 AM,**
Executed at: **1999 BRYAN STREET, SUITE 900, DALLAS, TEXAS 75201**
within the county of **DALLAS** at **11:58 AM,** on **Wednesday, January 25, 2017**,
by individually and personally delivering to the within named:

TYSON FOODS INC

By delivering to its **Registered Agent, CT CORPORATION SYSTEM**
By delivering to its **Authorized Agent, TERRI THONGSAVAT**
a true copy of this

CITATION and PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

having first endorsed thereon the date of the delivery.

BEFORE ME, the undersigned authority, on this day personally appeared **Adil Tadli** who after being duly sworn on oath states: "My name is **Adil Tadli**. I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained in this affidavit and aver that each is true and correct. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Practice and Remedies Codes as they apply to service of process. I am approved by the Supreme Court of Texas, Misc. Docket No. 05-9122 under Rule 103 and 501.2 of the TRCP to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas."

Adil Tadli

Of: **Dallas County**

By: ______________________
Authorized Person - SCH1206 - Exp 05/31/17

Subscribed and Sworn to by Adil Tadli, Before Me, the undersigned authority, on this 25TH day of January, 2017.

____
Notary Public in and for the State of Texas

GAIL ROESLE
Notary Public
STATE OF TEXAS
ID#126810380
My Comm. Exp. April 12, 2017

FILED
17 JAN 26 PM 12:06
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

FORM NO. 353-3 - CITATION
THE STATE OF TEXAS

To: **TYSON FOODS INC**
BY SERVING REGISTERED AGENT CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS TX 75201-3136

GREETINGS:
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **298th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **JOEL BENITEZ**

Filed in said Court **24th day of January, 2017** against

TYSON FOODS INC

For Suit, said suit being numbered **DC-17-00883,** the nature of which demand is as follows:
Suit on **OTHER PERSONAL INJURY** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 24th day of January, 2017.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

/s/ Marissa Pittman

By________________________________, Deputy
MARISSA PITTMAN

DISTRICT COURT OF DALLAS COUNTY, TEXAS

ESERVE

CITATION

DC-17-00883

JOEL BENITEZ
vs.
TYSON FOODS INC

ISSUED THIS
24th day of January, 2017

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: MARISSA PITTMAN, Deputy

Attorney for Plaintiff
WESLEY GOULD
325 N SAINT PAUL STREET
SUITE 4500
DALLAS TEXAS 75201
214-953-0182

DALLAS COUNTY
SERVICE FEES
NOT PAID

OFFICER'S RETURN

Case No. : DC-17-00883

Court No.298th District Court

Style: JOEL BENITEZ

vs.

TYSON FOODS INC

Came to hand on the _______________ day of _________________, 20________, at _________ o'clock________.M. Executed at _____________________________,

within the County of _________________________ at ___________ o'clock ______ .M. on the _______________ day of ____,

20______________, by delivering to the within named

____

____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was ________ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	$_________	____
For mileage	$_________	of________________County, ___________________
For Notary	$_________	By___________________________________Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said________________________ before me this______ day of ___________________, 20______,

to certify which witness my hand and seal of office.

____

Notary Public_________________County_______________

****SEE ATTACHED****
*****AFFIDAVIT*****

EXHIBIT "E"

FILED
DALLAS COUNTY
2/17/2017 3:23:26 PM
FELICIA PITRE
DISTRICT CLERK

KRC&L
ATTORNEYS & COUNSELORS
DALLAS • HOUSTON

KANE RUSSELL COLEMAN & LOGAN PC

ZACH T. MAYER
Direct Dial: (214) 777-4271
Email: zmayer@krcl.com

February 17, 2017

Via eFileTexas.gov
Via Email: greg.bevel@romclawyers.com
Via Email: wgould@romclawyers.com
Gregory H. Bevel
Wesley H. M. Gould
ROCHELLE MCCOLLOUGH, LLP
325 N. Saint Paul Street, Suite 4500
Dallas, Texas 75201

Re: ***Joel Benitez v. Tyson Foods, Inc.***
Cause No: DC-17-00883
Court: In the 298th Judicial District, Dallas County, Texas
Our File No.: 58140.00159.000

Dear Counsel:

Attached please find ***Defendant's Original Answer*** in the above-referenced matter, which was e-filed today in the 298th Judicial District Court, Dallas County, Texas.

In case you have any questions or require additional information, please do not hesitate to contact Brian J. Fisher at 214-777-4240 or bfisher@krcl.com and J. Edward Johnson at 214-777-4274 or ejohnson@krcl.com. Thank you for your cooperation and assistance in this matter.

Very truly yours,

KANE RUSSELL COLEMAN & LOGAN PC

By: Zach T. Mayer
Zach T. Mayer

ZTM/smp
Attachment

EXHIBIT "F"

FILED
DALLAS COUNTY
2/17/2017 3:23:26 PM
FELICIA PITRE
DISTRICT CLERK

CAUSE NO. DC-17-00883

JOEL BENITEZ,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
v.	§	**DALLAS COUNTY, TEXAS**
	§	
TYSON FOODS, INC.,	§	
	§	
Defendants.	§	**298TH JUDICIAL DISTRICT**

DEFENDANT'S ORIGINAL ANSWER

Defendant, Tyson Foods, Inc. ("Tyson") or ("Defendant"), files this Original Answer to the Original Petition and Request for Disclosure (the "Petition") filed by Plaintiff Joel Benitez ("Plaintiff") and states the following:

I.
GENERAL DENIAL

1. Defendant denies each and every, all and singular, the material allegations contained within Plaintiff's Petition and demands strict proof thereof.

II.
SPECIAL EXCEPTION

2. Defendant specially excepts to Plaintiff's Petition in its entirety because Plaintiff has pled for the recovery of monetary damages but has failed to specify the total amount of damages which he seeks to recover pursuant to the specific requirements of Texas Rule of Civil Procedure 47(c). Further, a party that fails to comply with Rule 47(c) may not conduct discovery until the party's pleading is amended to comply. Defendant requests that, after notice and hearing, the Court sustains this special exception and orders Plaintiff to re-plead and identify

with specificity the total amount of damages sought in accordance with Rule 47(c). Should Plaintiff refuse or fail to cure this defect, Defendant prays that the Court strike Plaintiff's Petition in its entirety.

III
AFFIRMATIVE DEFENSES

3. Pleading further, alternatively, and by way of affirmative defense, Defendant would state that in the unlikely event that an adverse judgment would be rendered against it, Defendant would respectfully request all available credits and/or offsets as provided by the Texas Civil Practice and Remedies Code and under Texas law.

4. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that in addition to any other limitation under law, Plaintiff's recovery of medical or health care expenses be limited to the amount actually paid or incurred by or on behalf of Plaintiff, pursuant to Section 41.0105 of the Texas Civil Practices and Remedies Code.

5. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that Plaintiff's claims, if any, for exemplary, punitive or other damages are barred, limited, restricted, and/or governed by the provisions of Chapter 41 of the Texas Civil Practice & Remedies Code and any other applicable statute concerning the recovery of damages and the common law of Texas. Accordingly, Defendant specifically pleads the limitations, restrictions and/or bar on the recovery by Plaintiff of such damages in accordance with Chapter 41 and other applicable law.

6. Pleading further, alternatively, and by way of affirmative defense, Defendant pleads the defense of unconstitutionality, in that any award of punitive or exemplary damages would constitute the imposition of a criminal penalty without the safeguards guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and

similar provisions of the Texas Constitution. Furthermore, the imposition of such punitive or exemplary damages constitutes an excessive fine under the Eighth Amendment, denies equal protection of the laws under the Fourteenth Amendment, and violates the due process clause of the Fifth and Fourteenth Amendments. Defendant plead that any claim by Plaintiff for punitive damages should be stricken as unconstitutional and that any award of punitive or exemplary damages should be set aside for the reasons stated above. Defendant further pleads that Plaintiff's claims for punitive or exemplary damages should be stricken in the absence of Plaintiff making some prima facie showing supporting such claims.

7. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that Plaintiff's alleged damages, if any, were solely caused by the conduct of other parties, including Plaintiff, or alternatively, that the conduct of other parties, including Plaintiff, was an intervening and/or superseding cause of Plaintiff's damages. Therefore, Defendant is not liable for such damages.

8. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that Plaintiff's alleged damages, if any, were solely caused by Plaintiff's preexisting conditions which were a new and independent cause(s). Therefore, Defendant is not liable for such damages.

9. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that any damages sought to be recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid the claimed damages

IV.
JURY DEMAND

10. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendant demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant Tyson Foods, Inc. prays that Plaintiff takes nothing by this suit, that Defendant goes hence with its costs without delay, and for such other and further relief, both general and special, at law and in equity, to which Defendant may show itself justly entitled.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
(214) 777-4200 / Fax (214) 777-4299

By: /s/ Zach T. Mayer
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ATTORNEYS FOR DEFENDANT TYSON FOODS, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of February 2017, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

Via eFileTexas.gov
Via Email: greg.bevel@romclawyers.com
Via Email: wgould@romclawyers.com
Gregory H. Bevel
Wesley H. M. Gould
ROCHELLE MCCOLLOUGH, LLP
325 N. Saint Paul Street, Suite 4500
Dallas, Texas 75201

/s/ Zach T.Mayer
Zach T. Mayer

EXHIBIT "G"

Chambers of JUDGE EMILY TOBOLOWSKY

WESLEY GOULD
ROCHELLE MCCULLOUGH LLP
325 N ST PAUL STREET
SUITE 4500
DALLAS TX 75201

DC-17-00883

JOEL BENITEZ
vs.
TYSON FOODS INC

Dismissal date: 03/13/2017

Counsel:

The court has determined that the above cause/motion has shown little or no progress for an unacceptable period of time.

Please appear in person before the court administrator on or before dismissal date indicated above to report the status of Said cause/motion and advise of any action the court may take to facilitate the disposition of this litigation.

If no appearance is made for this docket, the cause/motion will be dismissed for want of prosecution. This docket will be held at 9:00 a.m.

Thank you for cooperation with our efforts to better manage the dockets of this court.

Sincerely,

EMILY TOBOLOWSKY
DISTRICT JUDGE
298TH DISTRICT COURT, Dallas County, Texas

Chambers of JUDGE EMILY TOBOLOWSKY

File Copy

DC-17-00883

JOEL BENITEZ
vs.
TYSON FOODS INC

Dismissal date: 03/13/2017

Counsel:

The court has determined that the above cause/motion has shown little or no progress for an unacceptable period of time.

Please appear in person before the court administrator on or before dismissal date indicated above to report the status of Said cause/motion and advise of any action the court may take to facilitate the disposition of this litigation.

If no appearance is made for this docket, the cause/motion will be dismissed for want of prosecution. This docket will be held at 9:00 a.m.

Thank you for cooperation with our efforts to better manage the dockets of this court.

Sincerely,

EMILY TOBOLOWSKY
DISTRICT JUDGE
298TH DISTRICT COURT, Dallas County, Texas

EXHIBIT "H"

Case Information

DC-17-00883 | JOEL BENITEZ vs. TYSON FOODS INC

Case Number	Court	File Date
DC-17-00883	298th District Court	01/24/2017
Case Type	Case Status	
OTHER PERSONAL INJURY	OPEN	

Party

PLAINTIFF
BENITEZ, JOEL

Address
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Dallas TX 75201

Active Attorneys

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Retained

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214-953-0185

Attorney
BEVEL, GREGORY H
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DEFENDANT
TYSON FOODS INC

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Events and Hearings

01/24/2017 NEW CASE FILED (OCA) - CIVIL

01/24/2017 ORIGINAL PETITION

Original Petition 1.24.17..pdf

01/24/2017 CASE FILING COVER SHEET

Civil Cover Sheet.pdf

01/24/2017 ISSUE CITATION

01/24/2017 JURY DEMAND

01/24/2017 CITATION

Anticipated Server
ESERVE

Anticipated Method
Actual Server
PRIVATE PROCESS SERVER

Returned
01/26/2017

01/25/2017 CITATION ISSUED

DC1700883.pdf

01/26/2017 RETURN OF SERVICE

TYSON

Comment
CIT EXEC 1/25/17 TO TYSON FOODS INC PPS

02/17/2017 JURY DEMAND

02/17/2017 CORRESPONDENCE - LETTER TO FILE

LETTER TO PLAINTIFF'S ATTORNEY FORWARDING DEFENDANT TYSON FO

Comment
LETTER TO PLAINTIFF'S ATTORNEY FORWARDING DEFENDANT TYSON FOODS, INC.'S ORIGINAL ANSWER

02/17/2017 ORIGINAL ANSWER - GENERAL DENIAL

DEFENDANT'S ORIGINAL ANSWER

02/17/2017 NOTE - CLERKS

Comment
Called Def Attny office Req Jury Fee paid. (Plt fee paid 01/24/17)

03/13/2017 Final Disposition Hearing

NO ACTIVITY LETTER

NO ACTIVITY LETTER

Judicial Officer
TOBOLOWSKY, EMILY

Hearing Time
9:00 AM

Financial

BENITEZ, JOEL

Total Financial Assessment	$335.00
Total Payments and Credits	$335.00

1/24/2017	Transaction Assessment	$335.00

1/24/2017	CREDIT CARD - TEXFILE (DC)	Receipt # 4524-2017-DCLK	BENITEZ, JOEL	($335.00)

TYSON FOODS INC

Total Financial Assessment	$40.00
Total Payments and Credits	$40.00

2/17/2017	Transaction Assessment			$40.00
2/17/2017	CREDIT CARD - TEXFILE (DC)	Receipt # 10437-2017-DCLK	TYSON FOODS INC	($40.00)

Documents

Original Petition 1.24.17..pdf

Civil Cover Sheet.pdf

DC1700883.pdf

TYSON

NO ACTIVITY LETTER

NO ACTIVITY LETTER

DEFENDANT'S ORIGINAL ANSWER

LETTER TO PLAINTIFF'S ATTORNEY FORWARDING DEFENDANT TYSON FO